

Expedited Bill No. 27-09
Concerning: Ethics -- Amendments
Revised: 3-16-10 Draft No. 5
Introduced: June 16, 2009
Enacted: March 16, 2010
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the Ethics Commission

AN EXPEDITED ACT to:

- (1) amend the County ethics law to conform to a State Ethics Commission requirement; and
- (2) clarify and update other provisions of the County ethics law.

By amending

Montgomery County Code

Chapter 19A, Ethics

Sections 19A-4, 19A-8, 19A-10, 19A-12, 19A-16, 19A-17, 19A-18, [[19A-23,]] 19A-27,
[[and]] 19A-28, 19A-29, and 19A-32

Boldface	Heading or a defined term.
<u>Underlining</u>	Added to existing law by original bill.
[Single boldface brackets]	Deleted from existing law by original bill.
<u>Double underlining</u>	Added by amendment.
[[Double boldface brackets]]	Deleted from existing law or the bill by amendment.
* * *	Existing law unaffected by bill.

The County Council for Montgomery County, Maryland, approves the following act:

1 Sec 1. Sections 19A-4, 19A-8,, 19A-10, 19A-12, 19A-16, 19A-17, 19A-18,
2 [[19A-23,]] 19A-27, [[and]] 19A-28, 19A-29, and 19A-32, are amended as
3 follows:

4 **19A-4. Definitions.**

5 * * *

6 (i) **Immediate family** means spouse and dependent children. A child is a
7 dependent if the child may be claimed as a dependent for federal
8 income tax purposes. For a public employee, immediate family also
9 includes the employee's domestic partner[,] if the partner is receiving
10 County benefits.

11 (j) **Interest or economic interest** means any source of income or any
12 other legal or equitable economic interest, whether or not the interest
13 is subject to an encumbrance or a condition, which is owned or held[,]
14 in whole or in part, jointly or severally, and directly or indirectly.
15 Interest does not include:

16 * * *

17 (4) an interest in a common trust fund or a trust that forms part of a
18 pension plan or profit-sharing plan that:

19 (A) has more than 25 participants; and

20 (B) the Internal Revenue Service has determined [qualifies as
21 a] to be a qualified trust or college savings plan under
22 [sections 401 and 501 of] the Internal Revenue Code[[.]];
23 and

24 (5) an interest in a mutual fund (including a closed-end fund and a

unit investment trust) regulated by the Securities and Exchange Commission, in which the investor does not control the purchase or sale of the individual securities the fund holds.

* * *

19A-8. Waivers.

* * *

(f) Each waiver request must:

(1) be in writing;

(2) be signed under oath by the public employee who applies for the waiver;

(3) disclose all material facts;

(4) show how the employee meets the applicable waiver standard, and

(5) include a statement from the public employee's agency head (or the Chief Administrative Officer if the employee is not supervised by an agency head) indicating whether the agency head concurs with the waiver request.

[(f)] (g) The Commission must disclose to the public any waiver request that it grants[.] and, on request of any person, must disclose the underlying waiver request and any statement filed under subsection (f)(5) from the employee's agency head or the Chief Administrative Officer. If the Commission denies a request for a waiver [is denied], the Commission may publish its response as an advisory opinion under Section 19A-7(b). But the identity of any public employee who applies for a waiver must be kept confidential until the waiver is

granted. The Commission may reveal the identity of any public employee who applies for a waiver that is not granted if:

* * *

(h) After giving the public employee notice and an opportunity to respond, the Commission may revoke any waiver if it finds that the public employee who applied for the waiver did not disclose a material fact in the waiver request.

[(g)] (i) * * *

[(h)] (j) * * *

19A-10. Complaint; Adjudicatory Hearing.

* * *

(m) If the Commission finds a violation of this Chapter or Sections 2-109, 11B-51 or 11B- 52(a), the Commission may:

- (1) seek injunctive relief under Section 19A-27;
- (2) proceed under Section 19A-28;
- (3) seek recovery under Section 19A-29;
- (4) seek the imposition of disciplinary action by appropriate public employees under Section 19A-30;
- (5) order the subject of the complaint to stop any violation; [[and]]
- (6) issue a public or private reprimand, and
- (7) impose a fine which does not exceed \$1000.

* * *

19A-12. Restrictions on other employment and business ownership.

(a) *General restrictions.*

* * *

(5) After giving the public employee notice and an opportunity to respond, the Commission may revoke any action approving an employment request if it finds that the public employee did not disclose a material fact in the request.

(b) *Specific restrictions.* Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

* * *

(2) hold any employment relationship that [would] could reasonably be expected to impair the impartiality and independence of judgment of the public employee.

* * *

19A-16. Soliciting or accepting gifts.

* * *

(d) Subsection (c) does not apply to:

(1) meals and beverages [under] which do not exceed \$50 [per event or a higher amount, not to exceed \$100, that the Commission sets] from the same source in any calendar year;

* * *

(5) gifts to [a public employee who must file a public financial disclosure statement under subsection 19A-17(a),] an elected official, or that official's designee who is assigned to represent the official at an event included in this paragraph, if the gift:

* * *

(f) A public employee who receives a gift that the public employee must not accept under this Section must report the gift to the Commission,

if otherwise required to report it, and return the gift to the donor or transfer the gift to the County. If the unacceptable gift is a perishable item, the employee, instead of transferring the gift to the County, may transfer it to a charitable or educational organization that can make timely and effective use of the gift, so long as the employee is not an officer, director, trustee, partner, or employee of the receiving organization.

19A-17. Who must file a financial disclosure [statements] statement.

* * *

- (b) The following persons must file a confidential financial disclosure statement under oath:

* * *

[(6) any non-merit public employee (except temporary consultants and special legal counsel) paid at a rate above the minimum pay for pay grade 20, as adjusted from time to time under subsection 33-11(b), or the comparable pay grade if the general salary schedule is revised;]

[(7)] (6)* * *

[(8)] (7)* * *

- (c) In designating public employees to file public or confidential financial disclosure statements under subsection (a)(4) or (b)[(7)](6), the Executive should include those employees who have substantial responsibility for one or more of the following functions;

* * *

19A-18. Financial disclosure statement; procedures.

* * *

(e) (1) * * *

(D) The Chief Administrative Officer may designate the head of a County agency to review a statement. A director of a County agency or the Chief Administrative Officer may designate the deputy director of the agency or the chief of a division of the agency to review a statement. The designator ~~[[should]]~~ must inform the Commission of the delegation. The designee is subject to the same rules of confidentiality as the designator.

(2) After certifying that each part of the statement has been ~~[reviewed]~~ completed and that, on the basis of the information reported, there is no conflict of interest or potential conflict of interest with the filer's official duties, the agency director or Chief Administrative Officer must forward [it] the statement to the Commission within 30 days after receiving it. The agency director or the Chief Administrative Officer may retain a copy of the statement for one year after forwarding it to the Commission. If asked by an agency director, the Chief Administrative Officer, the County Executive, a Council member, or the filer of the statement, the Commission must review any statement within 120 days after receiving it.

* * *

(f) Each public employee required to file an annual financial disclosure statement under Section 19A-17 must also file a financial disclosure

statement:

(1) within 15 days after the employee begins employment in a position covered by Section 19A-17, covering the current calendar year up to the date of filing and, unless the employee has already filed a statement for the previous year, the previous calendar year; and

* * *

[[19A-23. How and when to register as lobbyist.

* * *

(c) A lobbyist must [register separately] file an annual registration form and pay any annual registration fee for each employer.]]

* * *

19A-27. [Petition for injunctive] Injunctive or other relief; cease and desist orders; voiding official actions.

* * *

(d) Except as expressly provided otherwise, any remedy specified in this Article may be invoked regardless of whether the Commission has found, after holding a hearing under Section 19A-10(c), that a public employee violated this Chapter.

19A-28. Penalties.

(a) Unless otherwise indicated, any violation of this Chapter or regulations adopted under it, or any violation of an order of the Commission, is a class A violation.

(b) The County Executive may authorize Commission staff or another County employee to issue a citation for any violation.

19A-29. Civil recovery.

(a) The County may recover damages, property, and the value of anything received by any person in a transaction that violates:

- (1) Article III of this Chapter;
- (2) Article XII of Chapter 11B; or
- (3) Section 2-109.

(b) The County may use a setoff, attachment, garnishment, or any other appropriate legal action or proceeding to recover any amount or property due.

* * *

19A-32. Removal for failure to file financial disclosure statement; fine.

(a) If a public employee does not file a complete financial disclosure statement when required to under Section 19A-18, the Chief Administrative Officer (for employees in the Executive branch) or the County Council staff director (for employees in the legislative branch) may remove the employee from employment with a County agency or from membership on a board, commission or similar body, paid or unpaid. Before an employee is removed for failing to file a financial disclosure statement, the County Attorney must give the employee 30 days notice of the proposed removal. The Chief Administrative Officer and the Council staff director must not remove an employee if the employee files the required complete financial disclosure statement within the time specified in the notice. This Section does not apply to an elected public ~~[[employees]]~~ employee.

(b) In addition to any action taken under subsection (a), the Commission

may impose a fine of \$2 per day, up to a maximum of \$250, against any person who does not file a complete financial disclosure statement on or before the date it is due. Within 30 days after a fine is imposed under this subsection, the person against whom the fine is assessed may file a written request with the Commission to reduce or waive the fine for good cause.

Sec. 2. **Expedited Effective Date.** The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on April 1, 2010. The amendment to Section 19A-10 made in Section 1 of this Act applies to any complaint filed after this Act takes effect.

Approved:

Nancy Floreen, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date